(16)

Supreme Court, U.S.
FILED
AUG 11 2000
CLERK

No. 99-1529

IN THE
Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A MINOR BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF,

Respondents.

On Writ of Certiorari to the Supreme Court of Washington

JOINT APPENDIX

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Petition for Writ of Certiorari Filed March 16, 2000
Certiorari Granted June 19, 2000

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Boeing Company Voluntary Investment Plan, Clerk's Papers (No. 94-4-01619-1) at 38, 44-45 (1993 ed.) JA-38

* * *

The following judgments, memoranda and orders have been omitted in printing this joint appendix because they appear on the following pages of the appendix to the printed *Petition for a Writ of Certiorari*:

Opinion of the Supreme Court of Washington (Nov. 18, 1999) 1a

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SUPREME COURT OF WASHINGTON

Case No. 67626-7

In The Matter of The Estate Of: David Egelhoff,

vs:

Samantha Egelhoff, *et al.*,

v.

Donna Rae Egelhoff

RELEVANT DOCKET ENTRIES

DATE	DESCRIPTION OF EVENT OR MOTION
01/27/99	PETITION FOR REVIEW
06/01/99	ORDER ON MOTIONS Petition For Review is Granted
07/01/99	RESPONDENTS SUPPLEMENTAL BRIEF Filed By: Jordan, Michael W. (ATT 16906)
10/14/99	Oral Argument Heard
11/18/99	OPINION
12/07/99	ORDER CHANGING OPINION
12/16/99	MANDATE

WASHINGTON STATE COURT OF APPEALS
Division 02

Case No. 22293-1

In re The Estate of David A. Egelhoff

RELEVANT DOCKET ENTRIES

DATE	DESCRIPTION OF EVENT OR MOTION
08/15/97	Status: Case Pending
10/31/97	MOTION FOR CONSOLIDATION W/22562-0-li
11/13/97	CO RL CONSOLIDATING APPEAL Appeal 225620 Consolidated to 222931
11/25/97	OTHER FILING Notice of Nonparticipation in Appellate Process Administration of Estate is Complete Except For Final Minimal Cash Bequests; Assets in Dispute Before Coa Are Non-Probate Assets Filed By: Smith, Frederick Parker (ATT 02867)
11/25/97	OTHER FILING Notice of Nonparticipation in App Process; Probate Proceedings Are Completed, But PR Will Keep Estate Open For Continuation of Appeal Which Was Filed Under The Cause of The Estate Filed By: Smith, Frederick Parker (ATT 02867)

DATE	DESCRIPTION OF EVENT OR MOTION
02/13/98	APPELLANTS BRIEF Filed By: Jordan, Michael W. (ATT 16906)
03/16/98	RESPONDENTS BRIEF Filed By: Haas, Henry (ATT 04435)
12/23/98	OPINION P-Reversed And Remanded

WASHINGTON STATE COURT OF APPEALS
Division 02

Case No. 22562-0

In Re The Welfare of S.M, Kate Breiner & David Egelhoff

vs.

Donna Rae Egelhoff and John Doe Egelhoff

RELEVANT DOCKET ENTRIES

DATE	DESCRIPTION OF EVENT OR MOTION
10/22/97	Status: Case Pending
11/03/97	MOTION FOR CONSOLIDATION W/22293-1-li
11/13/97	CO RL CONSOLIDATING APPEAL Appeal 225620 Consolidated to 222931

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

Case No. 96-2-12626-3

Kate Breiner et al

V.

Donna Rae Egelhoff et Vir. - Civil

RELEVANT DOCKET ENTRIES

Date	Description
11/15/96	Summons & Complaint
08/06/97	Answer & Affirmative Defense
08/27/97	Motion For Summary Judgment
09/30/97	Objection / Opposition
10/10/97	Order Granting Summary Judgment
10/22/97	Notice of Appeal 22293-1/67626-7

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

Case No. 94-4-01619-1

Estate of David A. Egelhoff - Probate

RELEVANT DOCKET ENTRIES

Date	Description
11/28/94	Petition For Letters of Administrat
12/05/94	Order in Re Injunction
05/30/97	Motion For Summary Judgment
06/04/97	Motion For Summary Judgment
06/27/97	Motion Hearing
08/08/97	Order Granting Summary Judgment
08/15/97	Notice of Appeal to Court of Appeal
01/07/00	Order to Disburse Funds

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

NO. 96-2-12626-3

SAMANTHA EGELHOFF, a minor
by and through her natural parent KATE BREINER
and DAVID EGELHOFF, a single person,

Plaintiffs,

vs.

DONNA RAE EGELHOFF and
"JOHN DOE" EGELHOFF, wife and husband,

Defendants.

FILED IN COUNTY CLERK'S OFFICE
OCT 01 1997
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

SECOND CERTIFIED STATEMENT OF
MICHAEL W. JORDAN

Michael W. Jordan hereby certifies under penalty of perjury as follows:

1. Attached hereto is a fax cover page and two page letter from the office of the Insurance Commissioner which I received in my office Tuesday, September 30, 1997.

2. These documents attached hereto are true and correct copies of the originals which were faxed to my office on the date stated.

3. These documents indicate that the office of the Insurance Commissioner is of the opinion that RCW 11.07 regulates life insurance companies.

DATED this 1st day of October, 1997.

JORDAN, IMLER & McGOVERN

/s/ Michael W. Jordan
MICHAEL W. JORDAN, WSB #16906

STATE OF WASHINGTON
[SEAL]
OFFICE OF
INSURANCE COMMISSIONER

FAX NO. (360) 407-0186

PLEASE DELIVER TO:
Michael Jordan

FROM:
John Zander

DATE: 9/30/97

NUMBER OF PAGES INCLUDING
TRANSMITTAL SHEET: 24

COMMENTS: Re: RCW 11.07

IF YOU DO NOT RECEIVE ALL PAGES,
PLEASE CALL (360) 407-0380

STATE OF WASHINGTON
[SEAL]
OFFICE OF
INSURANCE COMMISSIONER

BULLETIN

[DRAFT]

95- July , 1995

Attention: Life Insurers

Subject: Revocation of Life Insurance Beneficiary in Case of Dissolution

It has come to my attention that there are questions with respect to the application of Chapter 11.07 RCW to life insurance benefits or trusts, in the event of a dissolution of marriage or a declaration of the invalidity of a marriage.

The law applies in cases involving decrees of dissolution and declarations of invalidity entered after July 24, 1993. It also applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

Upon dissolution of a marriage, the law revokes a former spouse's interest in a non-probate asset, such as payable-on-death proceeds of a life insurance policy. The non-probate asset passes as if the former spouse died before the decedent. Thus, if a spouse is designated beneficiary, that designation may be revoked by a divorce.

As of January 1, 1995, this law may have some far reaching effects on life insurance proceeds where there have been dissolutions filed through the years. To help alleviate unwanted results, I am requesting companies contact their present policy holders to alert them to this law and its possible effect.

It is also important that any future purchaser of life insurance be apprised of the potential impact this law may have on life insurance proceeds. Companies must educate their agents so that prospective clients will be able to make informed decisions and choices.

Note, however, this automatic revocation does not apply in all situations:

1. It does not apply if the instrument governing disposition of the nonprobate asset expressly provides otherwise - for example, the beneficiary designation states that disposition of the payable-on-death proceeds will not be affected by RCW 11.07 in case of dissolution;

2. It does not apply if the decree of dissolution requires the maintenance of the nonprobate asset for the benefit of children of the marriage or for the benefit of the former spouse; and

3. It does not apply if immediately after the dissolution or invalidation of the marriage, the policy or other instrument could not have been unilaterally revoked by the decedent.

Therefore, the impact of this law may be avoided if (1) the beneficiary designation specifically states that RCW 11.07 does not apply; or if (2) if the matter of payable-on-death proceeds was addressed in the dissolution decree itself with respect to the distribution; or if (3) the instrument could not have been revoked unilaterally by the deceased.

RCW 48.18.440 appears to create a separate property interest in a spouse who is the beneficiary of a life insurance policy. Consumers should be advised to discuss this matter with a legal advisor in the event of dissolution of the marriage.

DEBORAH SENN
Insurance Commissioner

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF PIERCE

NO. 96-2-12626-3

SAMANTHA EGELHOFF, a minor by and through her natural parent KATE BREINER and DAVID EGELHOFF, a single person,

Plaintiffs,

vs.

DONNA RAE EGELHOFF and "JOHN DOE" EGELHOFF, wife and husband,

Defendants.

FILED IN COUNTY CLERK'S OFFICE
AUG 27 1997
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

DECLARATION OF HENRY HAAS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Date: 10/03/97
Time: 9:30 a.m.

The undersigned makes the following Declaration under penalty of perjury as permitted by RCW 9A.72.085:

1. I am one of the attorneys for the Defendant, Donna Rae Egelhoff, and make this declaration in support of the Defendant's Motion for Summary Judgment. This Declaration is made on personal knowledge and sets forth facts which would be admissible in evidence.

2. The identical parties have been involved in companion litigation in Pierce County Cause Number 94-4-01619-1.

3. On June 27, 1997, the Honorable Judge Karen Strombom heard cross motions for summary judgment on stipulated facts in Cause Number 94-4-01619-1, and granted summary judgment in favor of Donna Rae Egelhoff. A copy of the Order granting summary judgment in favor of Donna Rae Egelhoff is attached as Exhibit "A." The facts as stipulated are attached as Exhibit "B."

4. The facts in this case are identical to the Stipulated Facts in Cause Number 94-4-01619-1 with one exception. This case involves a group term life insurance policy on the life of David A. Egelhoff, deceased, which named Donna Rae Egelhoff as the sole beneficiary. Exhibit C. Cause Number 94-4-01619-1 involved a Boeing Company Voluntary Investment Plan ("VIP") which named Donna Rae Egelhoff as the beneficiary. The VIP fund was mentioned in a Decree of Dissolution entered in Pierce County Superior Court Cause Number 93-3-06226-4 on April 22, 1994. The term life insurance was not mentioned in the Decree of Dissolution.

5. The Boeing group term life insurance plan was established under and is regulated by the Employee Retirement Security Act ("ERISA"), 29 U.S.C. §§ 1001-1461. Exhibit D.

DATED this 27th day of August, 1997.

/s/ Henry Haas
HENRY HAAS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

NO. 96-2-12626-3

SAMANTHA EGELHOFF, a minor by and through her natural parent KATE BREINER and DAVID EGELHOFF, a single person,

Plaintiffs,

vs.

DONNA RAE EGELHOFF and "JOHN DOE" EGELHOFF, husband and wife,

Defendants.

FILED IN COUNTY CLERK'S OFFICE
AUG - 6 1997
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

ANSWER, AFFIRMATIVE DEFENSES, AND REQUESTS FOR AN AWARD OF ATTORNEYS FEES OF DEFENDANT DONNA RAE EGELHOFF TO PLAINTIFFS' COMPLAINT

COMES NOW DONNA RAE EGELHOFF ("Defendant"), by and through her attorney, HENRY HAAS of McGAVICK GRAVES, P.S., and in answer to Plaintiffs' Complaint for Conversion, states as follows:

I.

In answer to the allegations contained in Paragraph 1 of the Plaintiffs' Complaint, the Defendant admits the same.

II.

In answer to the allegation contained in Paragraph II of the Plaintiffs' Complaint, the Defendant admits the same.

III.

The Defendant answers the allegations contained in Paragraph III of the Plaintiffs' Complaint as follows:

A. Defendant is without sufficient information as to the truth or falsity of Sections 1, 2, and 3 of Paragraph III of Plaintiffs' Complaint and, therefore, denies the same.

B. Defendant admits the allegations contained in Section 4 of Paragraph III of Plaintiffs' Complaint concerning the residence of Defendant. Defendant is without sufficient information as to the truth or falsity of the remaining allegations contained in Section 4 of Paragraph III of Plaintiffs' Complaint regarding the "acts described and complained of" and, therefore, denies the same. Defendant is not married and, therefore, denies the remaining allegations contained in Section 4.

IV.

Defendant answers the allegations contained in Paragraph IV of the Plaintiffs' Complaint as follows:

A. Defendant admits the allegations contained in Sections 1, 2, 3, 4, 5, 6, and 9 of Paragraph IV of Plaintiffs' Complaint.

B. Defendant denies the allegations contained in Sections 7, 8, 10, and 11 of Paragraph IV of Plaintiffs' Complaint.

V.

In answer to the allegations contained in Paragraph V of the Plaintiffs' Complaint, the Defendant denies each and every allegation contained therein.

VI.

In answer to the allegations contained in Section 1 of Paragraph VI of the Plaintiffs' Complaint, the Defendant denies each and every allegation contained therein.

WHEREFORE, HAVING FULLY ANSWERED THE PLAINTIFF'S COMPLAINT, THE DEFENDANT, DONNA RAE EGELHOFF, ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:

VII.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of collateral estoppel. The parties have previously litigated the issues alleged herein in Pierce County Superior Court Cause No. 94-4-01619-1, wherein the Honorable Karen Strombom granted summary judgment in favor of Donna Rae Egelhoff. The issues decided in that action are identical to the issues presented in this action, and both actions arose from the same transactional nucleus of facts.

VIII.

SECOND AFFIRMATIVE DEFENSE

The life insurance benefits paid to Donna Rae Egelhoff are proceeds from a plan established under, and regulated by, the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461 and Plaintiffs' claims are preempted by ERISA. 29 U.S.C. § 1144(a).

IX.

REQUEST FOR AWARD OF ATTORNEYS' FEES

Defendant Donna Rae Egelhoff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g).

WHEREFORE, having fully answered the Plaintiffs' Complaint and asserted affirmative defense thereto, Defendant Donna Rae Egelhoff prays for the following relief:

1. For an Order dismissing Plaintiffs' Complaint, with prejudice and without an award of costs;

2. For an Order awarding Defendant reasonable attorneys' fees and costs incurred in defending this action; and

3. For such other and further relief as the Court deems just and equitable.

DATED this 6th day of August, 1997.

McGAVICK GRAVES, P.S.

By: /s/ Henry Haas
HENRY HAAS
WSBA #4435
Of Attorneys for Defendant
Donna Rae Egelhoff

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

NO. 94-4-01619-1

IN THE MATTER OF THE ESTATE of DAVID A. EGELHOFF, Deceased.

CERTIFIED STATEMENT OF KATE BREINER

Kate Breiner, under penalty of perjury of the laws of the state of Washington hereby certifies as follows:

1. I am the mother of the heirs of David A. Egelhoff in this matter, Samantha Egelhoff age 16, and David Egelhoff age 20;

2. I had a conversation by telephone with Donna Egelhoff after the date of David A. Egelhoff's death and before his funeral;

3. That phone conversation was initiated by Donna Egelhoff to me;

4. During that conversation, Donna made reference to the fact that she would be getting life insurance proceeds due to David's death, and talked to me about that subject;

5. Donna Egelhoff stated that David had failed to remove Donna's name as beneficiary after their divorce and that because of that fact, this time David Egelhoff's procrastination turned out to be in her favor;

6. During that same conversation, Donna Egelhoff told me that due to David's procrastination and failing to remove

her as beneficiary, she would be getting the life insurance policy money but that my children, Samantha and David, would be getting everything else;

7. After the funeral, I met with Donna Egelhoff at Borders Book Store in Tacoma and during the conversation with her, she referred more than once to the fact that she would be getting benefits due to David's procrastination;

8. During that conversation, she stated that David (decedent) would be angry if he knew this was happening because that was not what he wanted.

DATED this 15 day of July, 1997, at Everett Washington.

/s/ Kate Breiner
KATE BREINER

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

NO. 94-4-01619-1

IN THE MATTER OF THE ESTATE
of
DAVID A. EGELHOFF,
Deceased.

FILED IN COUNTY CLERK'S OFFICE
MAY 30 1997
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. *INTRODUCTION*

COMES NOW, Michael W. Jordan, attorney for Samantha Egelhoff, a minor, and David Egelhoff Jr. This summary judgment motion is brought by the children of decedent, David A. Egelhoff to recover retirement proceeds held by Boeing, David Egelhoff's employer. The children are the sole heirs of the estate of Egelhoff, by operation of law. David Egelhoff's ex-spouse also seeks these same proceeds as set out in the stipulated facts below.

II. *STIPULATED FACTS*

The children of David A. Egelhoff, Samantha Egelhoff, a minor appearing through her natural mother, Kate Breiner and David A. Egelhoff, Jr., appearing through their attorney Michael Jordan of Jordan, Imler, McGovern, P.S., and

Donna Rae Egelhoff, the former wife of David A. Egelhoff, deceased, by her attorney Henry Haas of McGavick Graves, P.S., stipulate to the following undisputed facts as the basis for cross-motions for summary judgment:

Decedent, David A. Egelhoff, married Donna Rae Egelhoff on November 4, 1988, in Tacoma Pierce County, Washington. Husband and wife separated on October 1, 1993, and were divorced on April 22, 1994, in Pierce County Superior Court Cause No. 93-3-06226-4, Findings of Fact, Conclusions of Law and Decree of Dissolution (Exhibit 1). They negotiated a settlement which was documented by a paralegal service and incorporated as Exhibits A and B to both the Findings of Fact and Conclusions of Law and Decree of Dissolution. During the period of their marriage and until his death on July 8, 1994, the decedent was employed by the Boeing Company. Throughout the marriage Donna Egelhoff was employed and contributed to the marital community. The decedent died on July 8, 1994, following a car accident. (See Exhibit 2, Death Certificate) The decedent died intestate.

The decedent had two children by a previous marriage, the "Children" herein. They have been living with their natural mother, Kate Breiner, since the decedent's first divorce. The decedent was paying Court order [sic] child support at the time of his death.

One of the decedent's benefits while employed by Boeing, was a Defined Contribution Profit Sharing Plan known by Boeing as a Voluntary Investment Plan. (hereinafter "VIP") The VIP plan was established under and is regulated by the Employee retirement Income Security Act (ERISA), 29 U.S.C. Sections 1001-1461. A copy of the relevant provisions of the plan are attached as Exhibit 3. The VIP also qualified under Sections 401 and 501 of the IRS Code. The VIP office

at Boeing administered the plan in accordance with all applicable ERISA rules.

Pursuant to ERISA rules, the VIP office required the decedent to complete a Beneficiary Designation Form which was kept on file at the VIP office. The decedent's Beneficiary Designation Form on file at the Boeing VIP office names Donna Rae Egelhoff as the sole and only beneficiary of any proceeds in his VIP account. This Beneficiary Designation Form was filled out and signed by the decedent while he was married to Donna Rae Egelhoff. After the death of David A. Egelhoff the Boeing VIP office contacted Donna Egelhoff and advised her that she was the beneficiary of the VIP fund.

The divorce between the decedent and Donna Rae Egelhoff was commenced by a pro se Petition for Dissolution filed in Pierce County on December 30, 1993. Though Donna Rae Egelhoff was the petitioner, the decedent joined in the petition. The petition at Paragraph 1.7 reads as follows:

> There is community of separate property owned by the parties. The Court should make an equitable division of all of the property.
>
> My recommendation for the division of the property is attached at Exhibit "A".

(See Petition for Dissolution of Marriage, Exhibit 1 copy attached)

Exhibit "A" to the petition mentioned above is a list of the property to be awarded the husband. One line on this list reads as follows:

"One hundred (100) percent of his Boeing retirement 401K and IRA" (See Petition for Dissolution of Marriage, Exhibit "A" to the petition, attached:)

The final dissolution by Findings of Fact and Conclusions of Law were signed and filed on April 22,1994. The Findings were by agreement.

Paragraph 2.9 of the Findings states:

> "The husband has separate property as set forth in Exhibit 'A'. This exhibit is attached or filed and incorporated by reference as part of these findings."

The Exhibit "A" described above is a list of the husband's separate property and includes: "100 percent of his Boeing retirement 401K and IRA". (see Findings of Fact and Conclusions of Law with its Exhibit "A" attached hereto)

After David A. Egelhoff's death on July 8, 1994, both the estate of David A. Egelhoff and Donna Rae Egelhoff made claims to Boeing for the retirement proceeds currently valued at about Thirty-Five Thousand ($35,000) Dollars, subject to payment of federal income tax upon distribution. By stipulation of the parties, these funds are enjoined by court order until further order of this court. . . .

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

NO. 96-2-12626-3

SAMANTHA EGELHOFF, a minor by and through her natural parent KATE BREINER; and DAVID EGELHOFF, a single person,

Plaintiffs,

vs.

DONNA RAE EGELHOFF and "JOHN DOE" EGELHOFF husband and wife,

Defendants.

FILED IN COUNTY CLERK'S OFFICE
NOV 15 1996
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

COMPLAINT FOR CONVERSION

COMES NOW plaintiffs, Kate Breiner on behalf of her minor child Samantha Egelhoff and David Egelhoff a single person by and through their undersigned attorneys of record and for causes of action against the defendants allege as follows:

I. JURISDICTION

This court has jurisdiction of this lawsuit, because the defendants reside in Pierce County, the defendant does

business in Pierce County, and the cause of action or some part thereof arose in Pierce County, Washington.

II. VENUE

Venue is proper in this court and county pursuant to RCW 4.12.

III. PARTIES

1. Plaintiff, David Egelhoff, is the natural child of David A. Egelhoff deceased and Kate Breiner. He is presently a resident of King County, Washington.

2. Plaintiff, Samantha Egelhoff, is a minor and is the natural child of David A. Egelhoff deceased and Kate Breiner. Samantha Egelhoff lives with her mother, Kate Breiner.

3. Kate Breiner is the natural parent of David and Samantha Egelhoff and resides in King County, Washington.

4. Defendant, Donna RAE Egelhoff, resides in Pierce County, Washington and does business in Pierce County, Washington. The acts described and complained of by plaintiff in this matter occurred either in Pierce County, Washington or King County, Washington. The full and complete name of the spouse of Donna RAE Egelhoff is unknown to these plaintiffs and is therefore referred to as "John Doe" Egelhoff.

IV. FACTS GIVING RISE TO THIS LAWSUIT

1. From approximately November 4, 1988, to April 22, 1994, defendant, Donna Egelhoff, was married to David A. Egelhoff, who was the father of plaintiffs, Samantha and David Egelhoff.

2. On or about April 22, 1994, David A. Egelhoff and defendant, Donna Egelhoff, were divorced by Decree of Dissolution in Pierce County, Washington.

3. On or about July 8, 1994, David A. Egelhoff died in Pierce County, Washington unexpectedly as a result of an accident.

4. On the date of David A. Egelhoff's death, he had in full force and effect a Life Insurance policy administered through his employer, the Boeing company or a subsidiary.

5. On the date of David A. Egelhoff's death, the named beneficiary on that Life Insurance policy was Donna RAE Egelhoff .

6. Within a few months of David Egelhoff's death, Donna RAE Egelhoff claimed and received the Life Insurance proceeds from that Life Insurance policy described above in the approximate amount of Forty-Six Thousand Dollars ($46,000).

7. Defendant, Donna RAE Egelhoff's, claim for and receipt of these Life Insurance proceeds was unlawful because her rights to her proceeds was revoked by operation of law upon the date of her divorce some three months prior to the date of David Egelhoff's death, pursuant to RCW 11.07.011.

8. The rightful heir and beneficiary to the Life Insurance proceeds are the natural children of David A. Egelhoff that being Samantha and David Egelhoff, plaintiffs.

9. David A. Egelhoff upon his death died intestate and an estate was opened styled "In The Matter Of The Estate of David A. Egelhoff, deceased" in Pierce County, Washington under cause number 94-4-01619-1.

10. As a result of Donna Egelhoff's claiming and receiving the Life Insurance benefits described above, the natural children of David A. Egelhoff were deprived of their rightful claim to the insurance proceeds by operation of law because they were the only heirs to David Egelhoff's Estate.

11. As a result of Donna Egelhoff's actions, in converting the Life Insurance proceeds to her own, the children and plaintiffs herein were damaged in an amount exceeding Forty-Six Thousand Dollars ($46,000).

V. BASIS OF CAUSES OF ACTION

1. Defendant, Donna RAE Egelhoff, unlawfully converted the Life Insurance proceeds to her own when these proceeds belonged to the only heirs of David A. Egelhoff. Her claiming of these proceeds was unlawful because the beneficiary designation was revoked by operation of law pursuant to RCW 11.07.010. Pursuant to that law, Donna RAE Egelhoff's rights to the insurance proceeds became revoked upon the date of the divorce decree which date was 76 days before David A. Egelhoff's death.

VI. DAMAGES

1. As a direct result of Donna RAE Egelhoff's unlawful claim and receipt of the Life Insurance proceeds, plaintiffs were injured in an amount exceeding Forty-Six Thousand Dollars ($46,000) by being deprived of their rightful claim to the insurance proceeds.

PRAYER

WHEREFORE, plaintiffs pray for relief against the defendants as follows:

1. For judgment against the defendants in an amount exceeding Forty-Six Thousand Dollars ($46,000) to be proven at the time of trial;

2. For plaintiffs costs and disbursements herein to be incurred and taxed.

3. For plaintiffs reasonable attorneys' fees incurred herein;

4. For such other and further relief as court may deem just and equitable in the premises.

DATED this 15th day of November, 1996.

JORDAN, IMLER & McGOVERN

/s/ Michael W. Jordan
MICHAEL W. JORDAN, WSB #16906

AETNA
80 Lamberton Rd.
Windsor, CT 06095

August 4, 1994

Ms. Donna R. Egelhoff
7530 Olympus
Tacoma, WA 98466

RE: Insured: David A. Egelhoff
SS#: 569-70-6114
Date of Loss: 7/8/94

Dear Ms. Egelhoff:

The Boeing Company has informed us of your ex-spouse's death, and we wish to express our sincere sympathy.

Enclosed is our draft for $23,000.00 in part settlement of the Group Life Insurance Proceeds due under Boeing Contract Number GL 714.

The claim for the Accidental Death Benefit will be investigated. We will need to obtain a copy of the police/accident report. If you should have a copy, please forward it to us in the envelope enclosed. If you do not have a copy of this report, please complete and sign the attached Authorization for Release of Information, and return said form to us using the envelope provided. We will subsequently order a copy of the report, and when a decision has been reached, we will advise you.

If, in the meantime, you should have any questions, please feel free to contact us at 1-800-523-5065.

Sincerely,

/s/ Lori J. Dupre

Lori J. Dupre, HIA
Life Claim Examiner
Aetna Life Insurance Company

cc: The Boeing Company

SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE
WPF DR 04.0300 (8/91)

NO. 93-3-06226-4

In re the Marriage of:

DONNA RAE EGELHOFF

Petitioner

and

DAVID ARCHER EGELHOFF

Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW (FNFCL)

[Filed Apr. 22, 1994]

* * * *

3.2 The parties should be granted a decree:

[x] of dissolution.
[ ] of legal separation.
[ ] declaring the marriage invalid.
[ ] declaring the marriage valid.

* * * *

3.4 PROPERTY TO BE AWARDED THE HUSBAND.

[ ] Does not apply.
[x] The husband should be awarded as his separate property the property set forth in Exhibit "A". This exhibit is attached or filed and incorporated by reference as part of these findings.

[x] The husband should be awarded as his separate property the following property (list real estate, furniture, vehicles, pensions, insurance, bank accounts, etc.): all property acquired after the date of the separation of the parties.

3.5 PROPERTY TO BE AWARDED THE WIFE.

[ ] Does not apply.

[x] The wife should be awarded as her separate property the property set forth in Exhibit "A". This exhibit is attached or filed and incorporated by reference as part of these findings.

[x] The wife should be awarded as her separate property the following property (list real estate, furniture, vehicles, pensions, insurance, bank accounts, etc.): all property acquired after the date of the separation of the parties.

* * * *

DATED: 4-22-94

/s/ Stephan Downing
Judge/Commissioner
STEPHAN D. DOWNING

Presented by:
/s/ Donna Egelhoff
DONNA RAE EGELHOFF
Petitioner, pro se

Approved for entry:
/s/ David Archer Egelhoff
DAVID ARCHER EGELHOFF
Respondent, pro se

EXHIBIT "A"

The husband:

His personal possessions and any property acquired since the date of the parties' separation.

1966 Mustang fastback and 1966 Mustang coupe, 4,500

1969 Ford pickup, 500

#55 Dwarfcar racecar and all interest and assets related to the racing of said car

Double bed and linens, queen sleeper sofa, naugahyde recliner, beige area rug, 386 computer, printer and mouse, Kenmore chest freezer, Amana microwave, Kenmore washer/dryer, yellow compactor, all kitchen appliances

100% of his Boeing retirement 401K and IRA

100% of his business known as Eagle Aviation

2 shares of Weyerhauser stock

Black and tan Daschound known as Rogue, red Daschound known as Gertie

All household goods currently in his possession and all property owned by him prior to the marriage.

Two and one half acres, market value 7,500, near Chehalis, Lewis County, Washington.

Real property, market value $85,000, located at 8124 Woodland Ave East, Puyallup, WA; and legally described as:

The South feet of the East 528 feet of the South half of the North half of the Northeast Quarter of the Northeast

Quarter in section 31, Township 20 North, Range 4 East of the W.M.; Except the South 63 feet of the East 250 feet thereof, and Except the North 90 feet of the East 250 feet thereof, and Except the North 75 feet of the West 278 feet thereof, and Except Woodland Avenue, also known as 70th Avenue East;

Situate in the County of Pierce, State of Washington.

The wife:

Her personal possessions and any property acquired since the date of the parties' separation.

3,500 for her equity in the family home. This shall be paid by April 1, 1997, or upon the distribution of funds from the sale of the house, whichever occurs first.

1988 Hyundai, MV $1,200

27" Zenith Television, Hitachi VCR, triple bookcase, exercycle, cloth covered recliner

100% of her Massage Therapy business

Edward D. Jones IRA

ARC stock

Black and tan female Daschound known as Peppy

All household goods currently in her possession and all property acquired prior to the marriage

IBM 486 Compatible, monitor and printer

BOEING 1993 Edition

Disability and Life Plans

* * * *

Disability and Life Insurance Plans

Foreword

This section describes the disability and life insurance coverages that may be available to you as an eligible hourly employee of The Boeing Company. Described in the pages that follow are the Weekly Disability Benefit Plan, the Life Insurance Plan, the Survivor Income Benefit Plan, and the Accidental Death & Dismemberment Benefit Plan. Together, these plans are designed to provide you and your family with a greater measure of financial security in the event you are disabled or die.

This section is a summary of major features of these plans as of January 1, 1993.

* * * *

Life Insurance Plan

Benefits

Your life insurance benefit is $23,000. The benefit will be paid to your beneficiary in the event of your death, regardless of the cause, time or place, while you are covered under this Plan.

Benefits will be paid to your beneficiary in either a lump sum or through installments. You may change your beneficiary any time by filing the appropriate change-of-beneficiary form that is available from the Boeing Group Insurance Office.

* * * *

Accidental Death & Dismemberment Benefit Plan

Benefits

This Plan provides benefits to your beneficiary in the event of your death, or to you in the event of the loss of your limbs or eyesight, if your death or loss is caused by an accidental injury to the body (including an occupational injury). The following benefits are payable if the injury occurs while you are covered under the Plan, and your death or loss occurs within 90 days of the injury.

In the event of your death, your beneficiary will receive the full principal sum of $23,000. This amount is in addition to any amount payable under the Life Insurance Plan or the Survivor Income Benefit Plan. Your beneficiary under the Accidental Death & Dismemberment Benefit Plan is the same as the beneficiary you have designated under the Life Insurance Plan.

* * * *

Liability for Plan Benefits

The contracts between Boeing and Aetna Life Insurance Company provide that Aetna will make all benefit determinations under the plans described in this booklet.

Under the contract for the Weekly Disability Benefit Plan, Boeing pays benefits up to a specified aggregate amount in a given month from its assets. The benefits are insured and are thereby Aetna's liability only to the extent that benefit payments exceed the specified aggregate monthly amount.

Aetna has liability for all benefit payments under the Life Insurance Plan, Survivor Income Benefit Plan, and Accidental Death & Dismemberment Benefit Plan. ■

* * * *

Voluntary Investment Plan

Foreword

* * * *

This section has been prepared for you as a summary of the major Plan features as of January 1, 1993. You are encouraged to review this Plan summary and to consider the investment opportunities and tax advantages that may be available through the Plan. After considering your own personal circumstances, you may wish to discuss participation in the VIP with a personal tax advisor or legal counsel.

* * * *

Benefits

You are entitled to full benefits in your VIP accounts under the following circumstances:

1. You retire from Boeing under a Company-sponsored retirement plan.
2. You terminate your employment with Boeing at or after age 65.
3. You are laid off for 31 or more continuous days.
4. You go on active duty with the U.S. armed forces for 91 or more days.
5. You terminate because of total disability as determined by the Voluntary Investment Plan Committee.

You also are entitled to full benefits if you have five or more years of vesting service with the Company. Vesting means that if you leave the Company, you have a guaranteed right to a portion or all of the funds in the VIP that were contributed by the Company on your behalf.

If you leave the Company for reasons other than those noted above and you have less than five years of vesting service, you will receive funds from your Company account according to the vesting schedule (Exhibit 4). You forfeit any portion of your Company account that is not vested when your benefits are distributed to you.

* * * *

Death Benefits

In the event of your death, your designated beneficiary will be entitled to the full value of all your accounts, including your Company matching accounts. Death benefits become payable as of the first day of the month following the date of death.

Since VIP funds of a deceased Plan member are withdrawn from the investment trust fund pending payment to the beneficiary, these benefits will not be subject to gains or losses that occur between the first day of the month following the death and the time the beneficiary receives payment. Your beneficiary may be eligible to defer receipt of your account balance, as explained on page 5-13.

Beneficiary Designations

You may designate a beneficiary to receive your VIP benefits in the event of your death, or change an earlier designation, by completing the appropriate beneficiary form provided by the VIP Office. If you are married and wish to designate someone other than your spouse as your beneficiary, federal

law requires that you receive the written consent of your spouse on the beneficiary designation form and that the spouse's signature be witnessed by a Notary Public or a VIP representative.

The VIP Office will only recognize beneficiary designations and changes that are filed on the official VIP beneficiary designation form and received before your death. You may not designate or change a beneficiary by using other documents such as divorce decrees, prenuptial agreements, wills or trusts. If you have not designated a beneficiary on the appropriate form, you have an invalid beneficiary designation, or your beneficiary is no longer living, benefits will be paid in the following sequence:

1. To your surviving spouse.
2. If there is no surviving spouse, to your children in equal shares.
3. To another relative designated by the Voluntary Investment Plan Committee or to your estate.

* * * *